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*P3 cancelled sub 3*

a tongue located on two adjacent edges and a groove located on two adjacent edges for connecting the panel to an adjacent panel with two corresponding tongues and two corresponding grooves to prevent relative vertical movement therebetween.

A copy of the claims showing the amendments is attached hereto.

#### Remarks

*He has (1) is member no. 1 an open grid only member (1) is an open grid disclosed by prior art allow the lower member to be squared from the under layer further protecting upper member from moisture 1 person has drawn*

Applicant thanks the Examiner for her thorough and thoughtful analysis of the application. Applicant however believes that the Examiner may be mischaracterizing certain aspects of the Kotler reference. In particular, Applicant notes that the Kotler structure is an open grid which would be incapable of protecting the upper member from moisture and that the interlocking arrangement in Kotler acts in a direction opposite to that of Applicant's structure (laterally rather than vertically). This is discussed in more detail below.

The above claim amendments emphasize these aspects of Applicant's structure and their significance vis-à-vis Kotler and the other cited references is discussed in detail below.

The Examiner states that the phrase "knob-like" in claim 1 is indefinite as including elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim unascertainable. Applicant respectfully disagrees with the Examiner's interpretation. "Knob-like" would be interpreted as "resembling a knob" rather than as "a knob or the like". In order to further clarify the meaning of claim 1, Applicant has amended "knob-like projections" to read -projections in the form of knobs-. Should the Examiner have a more elegant way of characterizing the illustrated protrusions, Applicant would be most interested in such a suggestion.

The Examiner states that Kotler anticipates claims 1, 3, 4 and 7 and that the remaining claims are obvious in view of Kotler in combination with either Witt, Thielen or Slocum. Applicant notes that the Examiner interchangeably refers to Kotler and "Kiliter". Applicant assumes that "Kiliter" is an alternate spelling inadvertently used by the Examiner and not

*no spelling error*

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a further reference. Should Applicant's understanding be incorrect, Applicant asks the Examiner to kindly provide particulars of any "Kilter" reference being referred to.

The Examiner states that the lower member 11 in Kotler is the same as the lower member in the present invention. Applicant respectfully disagrees on this point.

Kotler in column 4, lines 1-10 describes the lower member 11 as being a support grid made of repeating pattern of criss-cross members with interstitial openings 16 therebetween. The openings 16 communicate through the grid. Kotler therefore does not define "a continuous, moisture impervious sheet material having a plurality of projections in the form of knobs extending away from the upper member to support the upper member above an underlying surface, protects the underlying member from moisture and permit free drainage of moisture about the projections in between the flooring panel and the underlying surface".

Kotler further describes the upper member 12 as being a "cushion plate". Applicant's above amendments specify that the upper member is of "rigid" sheet flooring material.

The Examiner further states that Kotler is designed to interlock with other similar tiles in a connection means (22, 23) around the perimeter of the tile. Applicant respectfully points out that the Examiner is overlooking that the Kotler connection means provides lateral rather than vertical interlock therefore rendering the arrangement not only different from Applicant's arrangement but also unsuitable as an underflooring material. Applicant has further amended the language of claim 1 to more clearly specify that the interlocking is simply interlock adjacent edges of adjacent panels so as to prevent relative vertical movement therebetween.

In summary, Kotler does not have a rigid upper member and in fact it teaches away from one by providing a "cushion plate" intended to provide cushioning. Kotler lacks a lower member which is a continuous moisture impervious sheet material which protects the upper member from moisture. Furthermore the interlocking arrangement in Kotler provides lateral rather than vertical restraint and it would appear that removing this

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feature from Kotler would destroy the functionality of Kotler as Kotler is a playing surface having no other lateral restraining means.

The Examiner makes numerous obviousness rejections with respect to claims 2, 5, 6, 8, 9, 11 and 12, however those are all premised on the Examiner's understanding of Kotler, with which Applicant respectfully disagrees. As pointed out above, Applicant respectfully submits that the Examiner has misunderstood the nature of the plastic sheet grid in Kotler and accordingly this misunderstanding flows through into the Examiner's reasoning with respect to the obviousness rejections. In other words, the combinations suggested by the Examiner look to the other references as suggesting the nature of the upper layer or the interlocking arrangement of Applicant's invention, but still use the open grid structure of Kotler.

For the reasons set out above, Applicant respectfully submits that the lower member of Kotler is entirely different from that of Applicant's structure and would be entirely unsuitable for the purpose of which Applicant's structure is directed. Accordingly, no combination of the lower member of Kotler with any of the upper members or interlocking arrangements of the remaining references would yield Applicant's invention. Accordingly it follows that Applicant's invention as claimed in claims 2, 5, 6, 8, 9, 11 and 12 cannot be obvious in view of Kotler.

As claims 3, 4 and 7 depend directly or indirectly from claim 1, Applicant's reasoning with respect to claim 1 applies to those claims.

For the sake of completeness, Applicant is also filing herewith a Supplementary Information Disclosure Statement including translations of two German language references cited in the International Search Report.

Applicant respectfully submits that for the reasons set out above the application is in condition for allowance and action toward that goal is respectfully requested.

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Should there be any remaining issues with respect to the allowability of the present case, the Examiner is invited to contact Applicant's agent directly at the number set out below.

Respectfully submitted,

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## MARKED-UP TEXT SHOWING AMENDMENTS

SET OUT IN RESPONSE DATED OCTOBER 22, 2001

U.S. PATENT APPLICATION NO. 09/809,307

102 5,157,234  
 1. (twice amended) A flooring panel which provides underfloor drainage, the flooring panel comprising:

2 NAD: 386  
 386 10 say (not many)  
 an upper member of rigid sheet flooring material;

(1) a substantially rigid lower member, attached to the upper member and of [non-porous waterproof] a continuous, moisture impervious sheet material having a plurality of [knob-like] projections in the form of knobs extending away from the upper member to support the [flooring panel] upper member above an underlying surface, protect the upper member from moisture and to permit [moisture to drain] free drainage of moisture about the projections and between the flooring panel and the underlying surface; and

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 at least one part of [a connector] an interlocking assembly for [connecting] interlocking adjacent edges of adjacent of [said] the panels so as to prevent relative vertical movement therebetween.

10. (twice amended) A flooring panel according to claim 1, wherein the [connector] interlocking assembly comprises at least one key and at least one groove.

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 11. (amended) A flooring panel which provides underfloor drainage, the flooring panel comprising:

an upper member of rigid sheet flooring material;

a substantially rigid lower member, attached to the upper member and of [non-porous waterproof] a continuous, moisture impervious sheet material having a plurality of [knob-like] projections in the form of knobs extending away from the upper member to support the [flooring panel] upper member above an underlying surface, protect the upper member from moisture and to permit [moisture to drain] free drainage of moisture about the projections and between the flooring panel and the underlying surface; and

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a tongue located on two adjacent edges and a groove located on two adjacent edges for connecting the panel to an adjacent panel with at least one corresponding tongue and at least one corresponding groove to prevent relative vertical movement therebetween.

12. (amended) A flooring panel which provides underfloor drainage, the flooring panel comprising:

an upper member of rigid sheet flooring material;

a substantially rigid lower member, attached to the upper member and of [non-porous waterproof] a continuous, moisture impervious sheet material having a plurality of [knob-like] projections in the form of knobs extending away from the upper member to support the [flooring panel] upper member above an underlying surface, protect the upper member from moisture and to permit [moisture to drain] free drainage of moisture about the projections and between the flooring panel and the underlying surface; and

a tongue located on two adjacent edges and a groove located on two adjacent edges for connecting the panel to an adjacent panel with two corresponding tongues and two corresponding grooves to prevent relative vertical movement therebetween.